

Title Alert 2013-10

August 5, 2013

Statutory Amendments Affecting Realty Transfer Tax and Inheritance Tax

Purpose: To advise of the enactment of a law containing amendments to certain provisions of the Pennsylvania tax code relating to realty transfer tax and inheritance tax.

Background: On July 9, 2013, Act 52 was signed into law by the Governor. While the Act affects a number of tax types that are not applicable to the title industry, there were amendments affecting realty transfer tax and inheritance tax that are worthy of note. Those amendments are the focus of this Advisory. As it relates to realty transfer tax, the Act creates a new exempt transaction and further limits another exemption. As it relates to inheritance tax, the Act makes a certain type of property exempt from inheritance tax.

Advisory: Following are the pertinent amendments to the realty transfer tax statute that will take effect on January 1, 2014:

- The definition of "Real Estate Company" in Section 1101-C (72 P.S. §8101-C) is amended to include an upper-tier entity that owns, as 90% or more of its assets, a direct or indirect interest in one or more real estate companies. In addition, when determining whether a company meets the definition of "real estate company", the definition of "real estate" is amended to include real estate outside of Pennsylvania¹.
- The provisions under Section 1102-C.5 (72 P.S. §8102-C.5), pertaining to when transfer tax is owed on the transfer of ownership interests in a Real Estate Company, are amended to clarify how to determine whether there has been a 90% or more change in the ownership of a real estate company within a 3-year period, including legally binding commitments or options, enforceable at a future date, to execute a transfer of additional ownership interest within the 3-year period.²

¹ The amount of transfer tax, however, would be limited to the value of the real estate located within Pennsylvania.

² The amendment that took effect last year regarding this section included certain conditions for the future transfers that were removed with this amendment. See Title Alert 2012-17.

- An additional “excluded transaction” was created that excludes from realty transfer tax transfers for no or nominal consideration from the Commonwealth or its instrumentalities to a volunteer emergency medical services agency, volunteer fire company or volunteer rescue company, as well as transfers (with or without consideration) between two or more volunteer emergency medical services agencies, volunteer fire companies or volunteer rescue companies³. [New Section 1102-C.3(23) (72 P.S. §8102-C.3(23))].

The Act amends the inheritance tax statute by making the inheritance of certain family-owned business interests exempt from inheritance tax (for decedents dying after July 1, 2013). Such exemption, however, does not apply to property transferred by the decedent into the qualified family-owned business within one year of the decedent’s death, unless the property was transferred for a legitimate business purpose. [72 P.S. §9111(t)] This amendment took effect immediately (July 9, 2013).

If you have any questions, please feel free to contact us at 814-454-8278 or toll-free at 800-352-2216.

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³ “Volunteer emergency medical services agency”, “volunteer fire company” and “volunteer rescue company” are all defined terms in the statute.